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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

ABDOL R. ARJMANDFARD, M.D.

Holder of License No. 33227
For the Practice of Allopathic Medicine in the
State of Arizona

Docket No. **06A-33227-MDX**

Case No. MD-06-0126A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR
REVOCATION OF LICENSE,
STAYED AND SUSPENSION**

On October 11, 2006 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Daniel G. Martin's proposed Findings of Fact and Conclusions of Law and Recommended Order involving Abdol R. Arjmandfard, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent did appear and was not represented by counsel. The State was represented by Assistant Attorney General Dean E. Brekke. Christine Cassetta, of the Solicitor General's Section of the Attorney General's Office provided legal advice to the Board.

The Board having considered the ALJ's recommended decision and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 33227 for the practice of allopathic medicine in Arizona.

3. In February 2006, the Board initiated an investigation after Banner Baywood Hospital ("Baywood") reported it suspended Respondent for alleged sexual harassment of female employees at Baywood, and for alleged inappropriate sexual contact with a female

1 patient ("K.R.") who had been admitted to Baywood on three occasions between November
2 2005 and December 2005 for treatment of complications related to diabetes.

3 4. Board Investigator Meghan Hinckley with the assistance of Board Medical
4 Consultant Kelly Sems, M.D. conducted the Board's investigation. Ms. Hinckley and Dr. Sems
5 reviewed a series of records and conducted interviews as follows: (i) on February 6, 2006 Ms.
6 Hinckley interviewed K.R. and several Baywood employees; (ii) on February 7, 2006 Ms.
7 Hinckley interviewed K.R.'s husband; (iii) on February 8, 2006 Ms. Hinckley and Dr. Sems
8 interviewed Respondent; (iv) on February 13, 2006 Ms. Hinckley and Dr. Sems jointly
9 interviewed K.R.; and (v) on February 14, 2006 Ms. Hinckley interviewed Larry Spratling, M.D.,
10 Baywood's medical director.

11 5. On February 16, 2006 Respondent and the Board entered into an Interim
12 Consent Agreement pursuant to which Respondent agreed to undergo a psychosexual
13 evaluation at the Sexual Recovery Institute ("SRI") in Los Angeles, California. Prior to this time,
14 Respondent had been independently evaluated by two other psychologists, Patricia Johnson,
15 Ph.D. and Shannon Tromp, Ph.D.

16 6. SRI evaluated Respondent between February 20, 2006 and February 22, 2006
17 and issued their findings and conclusions on March 3, 2006. Respondent cooperated with the
18 evaluation, which included numerous psychological tests and clinical interviews, with one
19 exception: Respondent refused to take a polygraph test. The weight of the evidence presented
20 at hearing demonstrated that polygraph tests are standard components of psychosexual
21 evaluations.

22 7. SRI diagnosed Respondent as Axis I: Paraphilia (NOS) (generally defined by
23 Dr. Sems at hearing as a disorder wherein the person has difficulty controlling impulses of a
24 sexual nature and where the objects of the person's sexual desire are not necessarily
25 considered sexually arousing by others) and Axis II: Mixed Personality Disorder (NOS). SRI

1 recommended Respondent's license be revoked until he successfully completed an inpatient
2 treatment program for offending sexual behaviors.

3 8. On April 5, 2006 the Board issued Interim Findings of Fact and Conclusions of
4 Law concluding Respondent violated A.R.S. § 32-1401(27)(z) (engaging in sexual conduct with
5 a patient) and (27)(r) (violating a Board Order, viz, failure to take the polygraph test in
6 conjunction with the SRI evaluation). The Board concluded that emergency action was required
7 under A.R.S. § 32-1451(D) and summarily suspended Respondent's license.

8 9. On May 11, 2006 the Board issued a Notice of Hearing setting this matter for
9 formal administrative hearing before the Office of Administrative Hearings, an independent state
10 agency. The Board incorporated its Interim Findings of Fact, Conclusions of Law and Order by
11 reference into the Notice of Hearing.

12 10. By letter dated May 30, 2006 Respondent answered the Board's Notice of
13 Hearing denying all of the allegations that had been made against him by K.R. and the Baywood
14 nursing staff.

15 11. The hearing in this matter convened on June 14, 2006 further hearing was held
16 on June 15, 2006 (the record closed on July 14, 2006). Respondent appeared on his own
17 behalf; Assistant Attorney General Dean Brekke represented the State of Arizona.¹

18 Respondent's Alleged Inappropriate Sexual Contact with K.R.

19 12. On November 8, 2005 K.R. was admitted to Baywood in connection with an
20 episode of hypoglycemia. Respondent, working at Baywood as a hospitalist, admitted K.R. and
21 assumed responsibility for her care.

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23
24 ¹ One might expect that in a matter as significant as the instant case, where a professional license is at
25 stake and revocation of that license is a possible outcome, Respondent would have retained an attorney
to represent him. At hearing, Respondent explained that he previously had been represented by an
attorney (Stephen W. Myers, Esq.), but that he lacked the resources to continue that representation
through hearing.

1 13. K.R. credibly testified at the hearing that at one point during her admission,
2 Respondent entered her room to check her respiration, and in the course of doing so lifted her
3 gown to her neck, exposing her groin and breasts. K.R. considered Respondent's actions
4 unusual and uncomfortable, but did not make any complaint.

5 14. The credible evidence of record demonstrated that, although different
6 physicians employ different techniques with respect to auscultation of female patients, the
7 standard of practice does not include the lifting of a patient's gown to her neck.

8 15. On his last visit with K.R. prior to her discharge, Respondent hugged K.R. and
9 told her that he wanted her to be well.

10 16. Baywood discharged K.R. on November 12, 2005. On November 14, 2005 she
11 was re-admitted, again for hypoglycemia.

12 17. Because Respondent had previously been assigned to care for K.R., he
13 continued in that role upon K.R.'s second admission.

14 18. K.R. credibly testified to the following events having occurred during the course
15 of her second admission: (i) Respondent again lifted her gown to her neck while checking her
16 respiration; (ii) Respondent hugged her, and kissed her on her neck and mouth; (iii) Respondent
17 massaged her buttocks (in the absence of any medical indication to do so); (iv) Respondent
18 performed two pelvic examinations on K.R. (in the absence of any medical indication to do so),
19 and failed to wear gloves when he inserted his fingers into K.R.'s vagina; and (v) during the
20 course of one of the pelvic examinations, Respondent put his head between K.R.'s knees and
21 performed what K.R. described as oral sex. K.R. credibly testified that while Respondent was
22 performing the first pelvic examination (if one can accurately describe Respondent's actions as
23 an "examination" in the medical sense), he made comments to the effect "Is that where it hurts?"
24 and "Does that feel good?"
25

1 19. Following the second "examination," K.R. requested a nurse be in attendance
2 during all future examinations. For reasons not made clear at hearing, that request was not
3 honored.

4 20. At the time of her discharge on November 18, 2005 K.R. advised a member of
5 the Baywood nursing staff that Respondent had engaged in inappropriate conduct with her.
6 That evening, a floor nurse contacted K.R. by telephone, and K.R. made a formal complaint
7 against Respondent.

8 21. K.R. was again hospitalized in mid-December 2005 for diabetic ketoacidosis.
9 K.R. was initially admitted into Baywood's intensive care unit and subsequently was transferred
10 to a semi-private room on a telemetry floor.

11 22. K.R.'s prior complaint against Respondent notwithstanding, he was again
12 K.R.'s assigned physician during her December admission. K.R. credibly testified that during
13 the course of this admission, Respondent again raised her gown to her neck to examine her,
14 and, on this occasion, Respondent also massaged and kissed K.R.'s breasts.

15 23. Respondent elected not to testify at hearing; therefore, there is no evidence in
16 the record that directly refutes K.R.'s testimony. In argument to the tribunal, Respondent
17 offered a series of explanations for K.R.'s assertions, as follows: (i) K.R.'s allegations were
18 attributable to drug-induced delusions; (ii) K.R. is mentally ill; and (iii) K.R. was using
19 Respondent in an effort to make her husband jealous. Respondent also asserted that K.R.'s
20 allegations should not be deemed credible because (i) the details of her story changed over
21 time, and (ii) K.R. never, in any of her encounters with Respondent, called the duty nurse in
22 order to interrupt Respondent's advances.

23 24. Respondent advanced one further theory at hearing – that the allegations
24 against him were fabricated (or caused to be fabricated) by Dr. Spratling (Baywood's medical
25 director) as a reprisal against Respondent for his failure to have cooperated in the transfer of a

1 patient from Baywood to Banner Desert Medical Center. As Respondent did not testify at
2 hearing, and offered no other evidence regarding the alleged reprisals against him, there is no
3 evidence in the record to support this theory.²

4 25. Regarding Respondent's assertion that K.R.'s allegations were attributable to
5 drug-induced delusions, the evidence of record demonstrated that K.R. had been prescribed
6 and had taken numerous medications during the course of her hospital admissions, including
7 Xanax, Neurontin, Oxycodone, Morphine, Prozac, Ambien and Dilaudid, and that the side
8 effects of five of those medications are known to include hallucinations.

9 26. The foregoing evidence notwithstanding, there is no credible evidence of
10 record that K.R. experienced hallucinations secondary to her medications (or anything else)
11 during the course of any of her admissions to Baywood. Specifically, there are no records,
12 medical or otherwise, that document any such symptoms or any other drug reactions that might
13 support Respondent's contention that K.R.'s allegations were drug-induced rather than factual.³

14 27. Regarding Respondent's assertion that K.R. is mentally ill, Respondent elicited
15 evidence at hearing that K.R. began seeing a psychiatrist following the death of her 13-year-old
16 daughter in 2000, and that she receives prescriptions for two psychotropic medications (Prozac
17 and Xanax). Respondent failed, however, to present any substantial or credible evidence to
18 support his assertion that K.R.'s allegations are attributable to a mental illness.

19 28. Regarding Respondent's contention that K.R.'s allegations were made in an
20 effort to make her husband jealous, K.R.'s denial, which included the following commentary, is
21 credible: "I think you're way off. I'm sorry. If I were going to use somebody to make [my
22

23
24 ² Even assuming, for purposes of argument, that Respondent was the subject of a retaliatory action by
25 Dr. Spratling, the record contains no credible evidence or explanation as to how K.R. could have come to
participate in such an action.

³ Dr. Sems testified that at no point during her interactions with K.R. did she observe K.R. hallucinating or
being delusional.

1 husband] jealous, it wouldn't be you. It would be my next door neighbor or the guy at the
2 grocery store . . ."

3 29. Regarding Respondent's assertion that K.R.'s allegations should not be
4 deemed credible because the details of her story changed over time, the Administrative Law
5 Judge agreed that K.R.'s recounting of the events in question became more detailed over time,
6 but found the most credible explanation of this phenomenon to be that advanced by the Board,
7 i.e., that as K.R. became more comfortable in her relationship with the Board's investigators,
8 she was more comfortable divulging details of her encounters with Respondent.

9 30. Respondent's final assertion is that K.R.'s allegations should not be deemed
10 credible because K.R. never, in any of her encounters with Respondent, called the duty nurse in
11 order to interrupt his advances. Such assertion is perhaps the most troubling of Respondent's
12 arguments, as it demonstrates a complete lack of recognition by him as to the position of power
13 he holds in the physician/patient relationship. If anything, the fact that K.R. delayed reporting
14 Respondent's conduct reinforces, rather than detracts from, the credibility of her allegations.

15 Respondent's Alleged Violation of the Interim Consent Agreement

16 31. As set forth above, the evidence of record demonstrated that (i) polygraph tests
17 are standard components of psychosexual evaluations, and (ii) Respondent refused to take the
18 SRI polygraph test.

19 32. The Interim Consent Agreement does not specify that Respondent will submit
20 to a polygraph test as part of the SRI evaluation, however, the Interim Consent Agreement does
21 provide that any violation of the agreement is unprofessional conduct and may result in
22 disciplinary action. The Interim Consent Agreement required Respondent to undergo an
23 evaluation at SRI. A polygraph is a standard component of such evaluation and Respondent did
24 not complete that component. Respondent may not pick and choose those portions of an
25

1 evaluation he will complete. Respondent was required to undergo and evaluation at SRI and he
2 did not complete that evaluation.

3 Other Evidence

4 33. Respondent offered into evidence a report of examination prepared by clinical
5 psychologist Dr. Shannon Tromp. Dr. Tromp examined Respondent in January 2006 following
6 his suspension at Baywood.

7 34. Dr. Tromp concluded, with respect to K.R.'s allegations:

8 The issue of inappropriate behavior involving the patient is more concerning and
9 suggests a potentially higher risk to the public, but only if the complaints are true
10 and not distorted. Without objective information regarding the patient's mental
11 status and direct self report from her, I have no way of fairly and validly
12 assessing this aspect of the case.

13 35. Given the inconclusive nature of Dr. Tromp's finding as set forth above, her
14 report cannot be considered either probative or exculpatory with respect to the primary issue
15 presented by this case, that of Respondent's sexual misconduct with K.R. Dr. Tromp found as a
16 protective factor that "Respondent is willing to pursue treatment and training to address his
17 limitations and is willing to modify his patient care procedures to ensure that he is not examining
18 female patients without a third party present."

19 36. Dr. Mohsen Sharifi, M.D. testified on Respondent's behalf at hearing. Dr.
20 Sharifi is an interventional cardiologist, currently in private practice.

21 37. Dr. Sharifi stated that he has known Respondent for approximately one year,
22 and that he believed K.R.'s allegations to be "totally inconsistent" with his perception of
23 Respondent. Dr. Sharifi and Respondent have treated many patients together, and in none of
24 those cases has Dr. Sharifi heard any complaints about Respondent.

25 38. Dr. Sharifi is familiar with the patient rooms at Baywood. When asked whether
Respondent's conduct, as described by K.R., was likely to have gone on unseen or unheard, Dr.
Sharifi testified: "Well, I've carefully listened to what the patient has alleged. I reviewed some

1 of the papers today that was released to me. [sic] And given the totality of the circumstances,
2 given my experience at Banner, given that particular location, I do not think that this is possible
3 to the extent that she has described."

4 39. Dr. Sharifi's testimony, credibly given, does not outweigh the testimony
5 provided by K.R. as to the nature and extent of Respondent's acts.

6 **CONCLUSIONS OF LAW**

7 1. In this proceeding, the Board bears the burden of proof by a preponderance of
8 the evidence. *See* A.A.C. R2-19-119.

9 2. A preponderance of the evidence is "such proof as convinces the trier of fact
10 that the contention is more probably true than not." Morris K. Udall, Arizona Law of Evidence
11 § 5 (1960).

12 3. Based on the evidence presented, the Board sustained its burden of proof as to
13 Respondent's alleged violation of A.R.S. § 32-1401(27)(z) and A.R.S. § 32-1401(27)(r).

14 4. A.R.S. § 32-1401(27)(z) defines unprofessional conduct as:

15 Engaging in sexual conduct with a current patient or with a former patient within
16 six months after the last medical consultation unless the patient was the
17 licensee's spouse at the time of the contact or, immediately preceding the
physician-patient relationship, was in a dating or engagement relationship with
the licensee. For the purposes of this subdivision, "sexual conduct" includes:

- 18 (i) Engaging in or soliciting sexual relationships, whether consensual or
19 nonconsensual.
20 (ii) Making sexual advances, requesting sexual favors or engaging in any
21 other verbal conduct or physical contact of a sexual nature.
(iii) Intentionally viewing a completely or partially disrobed patient in the
course of treatment if the viewing is not related to patient diagnosis or treatment
under current practice standards.

22 5. The weight of the credible evidence presented at hearing demonstrated that
23 Respondent made sexual advances to K.R., that Respondent engaged in physical contact of a
24 sexual nature with K.R., and that Respondent intentionally viewed K.R. while she was
25 completely or partially disrobed when such viewing was not related to patient diagnosis (as set

1 forth in the Findings of Fact, the relevant standard of care for auscultation of female patients
2 does not include the lifting of the patient's gown to her neck). Thus, Respondent violated A.R.S.
3 § 32-1401(27)(z).

4 6. A.R.S. § 32-1401(27)(r) defines unprofessional conduct as "[v]iolating a formal
5 order, probation, consent agreement or stipulation issued or entered into by the board or its
6 executive director under this chapter."

7 7. The evidence demonstrated that Respondent agreed to undergo a
8 psychosexual evaluation at SRI pursuant to an interim consent agreement with the Board.

9 8. By refusing to participate in the polygraph test, Respondent deprived SRI of
10 useful data for making its evaluation and violated A.R.S. § 32-1401(27)(r).

11 9. A.R.S. § 32-1451(M) provides:

12 Any doctor of medicine who after a formal hearing is found by the board to be
13 guilty of unprofessional conduct, to be mentally or physically unable safely to
14 engage in the practice of medicine or to be medically incompetent is subject to
15 censure, probation as provided in this section, suspension of license or
16 revocation of license or any combination of these, including a stay of action, and
17 for a period of time or permanently and under conditions as the board deems
18 appropriate for the protection of the public health and safety and just in the
19 circumstance. The board may charge the costs of formal hearings to the
20 licensee who it finds to be in violation of this chapter.

21 10. Based on the foregoing statute, Respondent is subject to disciplinary action
22 because he is found to have engaged in unprofessional conduct based on his violation of A.R.S.
23 §§ 32-1401(27)(r) and 321401(27)(z).

24 ORDER

25 1. The Board's April 5, 2006 Order summarily suspending Respondent's license
for the practice of allopathic medicine in the State of Arizona is upheld, and such suspension
shall remain in effect until the effective date of the Order entered in this matter (the "Effective
Date").

1 2. Commencing on the Effective Date, Respondent's license for the practice of
2 allopathic medicine in the State of Arizona is revoked. However, revocation is stayed and
3 Respondent's license is Suspended until further Order of the Board. Within 90 days Respondent
4 shall enroll in, at his own expense, a Board approved evaluation and treatment program for
5 sexual offenders; successfully complete the evaluation and treatment; and comply with all
6 recommendations of the evaluation and treatment facility. If Respondent does not enroll in the
7 treatment program within 90 days and/or does not successfully complete the evaluation and
8 treatment program and/or does not comply with any and all recommendations of the treatment
9 program the stay shall lift and Respondent's license revoked.

10 3. At the conclusion of twelve months from the effective date of this Order
11 Respondent may petition the Board to lift the suspension. The Board may require any
12 evaluation or other evidence to determine whether to lift the suspension. Such reinstatement, if
13 granted, shall be in accordance with such terms and conditions as may be recommended by
14 Respondent's therapist(s) and/or such other conditions as may be adopted by the Board to
15 protect the public health and safety.

16 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

17 Respondent is hereby notified that he has the right to petition for a rehearing or
18 review by filing a petition with the Board's Executive Director within thirty (30) days after
19 service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient
20 reasons for granting a rehearing. A.C.C. R4-16-102. Service of this order is effective five
21 (5) days after date of mailing. If a motion for rehearing is not filed, the Board's Order
22 becomes effective thirty-five (35) days after it is mailed to Respondent.

23 Respondent is further notified that the filing of a motion for rehearing is required
24 to preserve any rights of appeal to the Superior Court.
25

1 Dated this 16th day of October, 2006.



ARIZONA MEDICAL BOARD

By: 
Timothy C. Miller, J.D.
Executive Director

7 Original of the foregoing filed this
16th day of October 2006, with:

8 Arizona Medical Board
9 9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

10 Copy of the foregoing filed this
11 16th day of October, 2006, with:

12 Cliff J. Vanell, Director
13 Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

14 Executed copy of the foregoing mailed
15 by US Mail this 16th day of October,
2006, to:

16 Abdol R. Arjmandfard, M.D.
17 (Address of record)

18 Dean Brekke
19 Assistant Attorney General
20 Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, Arizona 85007

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